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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1760th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Cambodia (CCPR/C/81/Add.12; CCPR/C/65/Q/KHM/1) (continued)

1. At the invitation of the Chairperson, the members of the Cambodian delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the Cambodian delegation to reply to the oral questions asked by the Committee members after hearing the delegation's replies to the questions posed in paragraphs 24-33 of the list of issues (CCPR/C/65/Q/KHM/1).

3. Mr. OM Yentieng (Cambodia), replying to the questions on the situation of women in regard to marriage, stated that, in accordance with the law on marriage and the family, forced and early marriages were both prohibited. The fixed legal age for marriage was 20 years for men and 18 years for women. Marriages entered into at any earlier age were null and void, although they might become valid once the young persons in question attained the required age. In practice, although girls could not be obliged to marry a particular man, most still sought their parents' advice on the matter.

4. Replying to the questions concerning the case of the three judges who had been suspended by the Minister of Justice, he stated that the suspension was only a temporary measure taken in circumstances where a person convicted of opium trafficking had been sentenced to three years' imprisonment by a final judgement. The same person had then been tried in another case concerning trafficking in three tons of hashish intended for export. Having been convicted in the second case, the accused had then lodged an appeal. The three judges responsible for ruling on the appeal had ordered his release, having omitted to remember that he had been sentenced to three years' imprisonment in the first case and could not therefore be released. Moreover, on his release, the man in question had left the country, aided and abetted to that end by an international organization operating in Cambodia. It was under those circumstances that the Minister of Justice, who was also a member of the Supreme Council of Justice, had decided to suspend the three appeal judges on a temporary basis pending a decision from the Council.

5. There were two aspects to the land rights of ethnic minorities. First, the minorities traditionally practised "slash-and-burn" agriculture and therefore moved on every three years in search of new land to cultivate. That practice was not one encouraged by the Government, which was making efforts to help minorities to settle permanently and use manure, for example, to fertilize their land. Secondly, a number of companies were making attempts to establish themselves on land belonging to ethnic minorities, which was forbidden. In cooperation with the United Nations Development Programme (UNDP), the Government had organized a seminar on that issue and had prohibited investments aimed at acquiring land belonging to ethnic minorities.

6. Responding to a question on the case of a deputy who had automatically lost his seat in the National Assembly after being expelled from his party, he said that the decision to withdraw the deputy's mandate had been taken by the National Assembly itself. In Cambodia, one had to be a member of a political party in order to be a deputy and ministers had to be members of a party represented in the National Assembly. There were now three such parties. The deputy in question had been the Minister of Finance; having been expelled from his party, he had automatically been removed from his ministerial office. Furthermore, the party could ask the National Assembly to replace him as deputy with the person on the party list who had obtained the next largest number of votes after him. The deputy concerned had declared his intention to contest the decision and the case was due to come before the Constitutional Council. Only the interested party, however, was able to embark on that step.

7. Mr. OK Vannarith (Cambodia), replying to the questions on violence in the family, said he did not deny that such violence existed in Cambodia, as in other parts of the world. Nevertheless, he believed that Mr. Zakhia had painted an exaggerated picture of the situation.

8. Concerning article 31 of the Constitution, which dealt with the rights and obligations of Cambodian citizens, he pointed out that, in Cambodian tradition, aliens were guests. They therefore enjoyed the same rights as Cambodian citizens, but had no fixed duties under the Constitution, which explained why article 31 made no mention of aliens.

9. In response to the questions on detention, he said that, as far as he was aware, there had been only one case of rape among the 3,500 persons deprived of their liberty, and the director of the establishment concerned had been removed from office following the incident. In addition, prison visits were authorized once a month and not, as had been said, once every two months. Freedom of correspondence was guaranteed to detainees, who could lodge a complaint if they were subjected to violence. He conceded that the wages of 1,000 riels a day received by detainees were quite frugal. However, compared to the amount which a labourer would spend on food, for example, they were far from insubstantial. All prisons had a running water supply. There was undoubtedly room for further improvement on that score, but resources were lacking.

10. He confirmed that some minors were indeed detained in prisons instead of being placed in homes for young offenders. The minors in question, however, were unwelcome to the residents of those homes, who feared for their own safety. It was for that reason that some minors had been placed in detention centres.

11. In reply to the questions asked concerning the freedom of expression in Cambodia, he said that there were 70 press organs, 10 of which were foreign language publications. The press enjoyed immense freedom, which it sometimes abused by making offensive remarks about the royal family, for example. To his knowledge, however, no journalist had ever been placed in detention for his writing. Cambodia had six television channels, one of which was a State channel, and 12 radio stations. The two religious radio stations were both Catholic. Although Buddhism was the State religion, it had no radio station owing to lack of financial resources.

12. Lastly, a question had been asked about the registration of newborn infants. He said that, at the time of the events mentioned, a political party had accused the Government of registering newborn members of alien minorities. The Government and the parties represented in the National Assembly had reached a consensus to put a temporary end to that situation, which nonetheless persisted, as the authorities had no means of monitoring the application of their decisions.

13. Ms. EVATT understood that, in certain circumstances, the Supreme Council of Justice could suspend or invalidate a court decision and wished to know precisely what those circumstances were. She also drew the Cambodian delegation's attention to the fact that the questions asked about violence in the family had arisen as a direct result of what was said in the report (CCPR/C/81/Add.12), particularly in paragraphs 325, 333 and 339.

14. Mr. ZAKHIA, noting that Buddhism was the State religion, inquired about the practical implications of that status for the lives of citizens.

15. Mr. OM Yentieng (Cambodia), returning to the subject of the temporary suspension of three judges ordered by the Minister of Justice, stated that the Minister simply established files for the Supreme Council of Justice, which had the exclusive competence to suspend or remove lawyers. In the case in question, as the Supreme Council of Justice had not fulfilled its mandate, the Minister of Justice had imposed a temporary sanction and the judges concerned should soon be reinstated without any other particular sanctions, following a decision from the Supreme Council of Justice. Admittedly, the action taken by the Minister of Justice was not fully compliant with the law, but it nonetheless tended towards the interests of society. The authorities had a duty to combat the corruption of judges and should also crack down heavily on drug trafficking, which was otherwise likely to increase. Cambodia was simply a transit country for drugs and the authorities wished to ensure that it did not become a producer.

16. Turning to the question of forced marriages, he wished to place marriage in the country's traditional and social context. Within the family, girls held a more important position than boys, as they maintained the home, looked after their parents when they grew old and, generally speaking, were more acquiescent to their parents' views, particularly concerning the choice of husband. On that score, it was extremely rare that a girl would dare to oppose her parents. In Cambodia, the woman was also the dominant member of a couple, as she carried out the domestic chores, raised the children and managed the household budget. An employed husband would hand his salary over to his wife, thereby confiding her with the task of running the domestic finances. In rural areas, it was generally the women who, through their labour, provided financial support for the entire family. In addition, the Government policy aimed at advancing the status of women focused on rural areas, where the practice of granting credit to women for the establishment or management of smallholdings or small enterprises was receiving special encouragement from the authorities. In Cambodia, women decided everything and the mother's opinion concerning a daughter's marriage carried more weight than that of the father. Even so, cases of violence in the family had been recorded, but they were few and far between and the victims were able to seek

justice. Moreover, the National Human Rights Commission planned to confer upon one inhabitant in each of the country's 120,000 villages the role of mediator in family disputes.

17. Mr. OK Vannarith (Cambodia), replying to Mr. Zakhia's question about the implications of the status of Buddhism in Cambodia, pointed out that Buddhism was not only the State religion, but also a religion that fostered human rights in that it extolled wisdom and respect for all living beings.

18. The CHAIRPERSON said that the consideration of the initial report of Cambodia was thus complete. On behalf of the Committee, she wished to thank the Cambodian delegation for its willingness to respond to the questions asked. The Committee was aware of the economic and other difficulties facing the country. The relationship which it had just formed with the State party in considering its initial report was simply intended to help Cambodia to overcome those difficulties in the light of its obligations under the Covenant. It regretted, however, the imprecise replies to the Committee's detailed written questions, as well as the gap between the information provided orally and that contained in the report.

19. Pending publication of the Committee's concluding observations, she briefly reviewed some of the concerns voiced by the Committee members. She first mentioned the problem of impunity and the difficulties involved in trying the perpetrators of genocide. It had emerged from the reply addressed to the Secretary-General by the Cambodian authorities following publication of the report of the Special Representative for human rights in Cambodia (E/CN.4/1999/101) that, in the main, the State party pleaded obstacles inherent to the internal legal order and the danger of the return of the Khmer Rouge with a view to eliminating the possibility of having those responsible for genocide tried by an international criminal tribunal. However, in order to ensure that the country re-established itself on solid ground, it was imperative to rebuild the trust of the Cambodian people. It was only by confronting the past that such an objective could be achieved. In addition, article 51 of the 1994 Law on Civil Servants was incompatible with the Covenant and should be repealed, providing as it did that Government officials (including members of the security forces) could be neither arrested nor prosecuted without the prior approval of the minister to whom they were answerable. Similarly, article 31 of the Constitution, which restricted the enjoyment of human rights to Cambodian citizens alone, conflicted with the provisions of the Covenant.

20. In both the report and the statements made by the delegation, the detrimental effects of traditions on the situation of women, particularly in the fields of education and employment, had been recognized. The representatives of the State party had conceded that women were under-represented in the various decision-making bodies, a problem which they attributed to the composition of the political parties, which had few women members. In the view of the Committee, whatever the reasons for that situation, the State party had a duty to take measures to ensure a balanced representation of men and women. It had further emerged from the discussion that, although prohibited by law, early and forced marriages still existed in practice. In that connection, it was equally incumbent on the State to assume its responsibilities by strictly applying the laws in force. In its replies,

the delegation had played down the seriousness of the problem of violence in the home, thereby contradicting the content of paragraphs 325 and 339 of the report. According to the Cambodian Minister for women's affairs, one woman in every six was a victim of domestic violence. The fact that such women had the right to take their cases to court was insufficient. Rules should be adopted in order to combat the scourge of violence. In particular, social measures should be taken to change the nature of the relations between men and women. The problem of traffic in women and children, together with that of prostitution, was another area in which the State should intervene vigorously.

21. The replies of the Cambodian delegation to the questions concerning torture and the right to life were far from satisfactory. The same applied to the problem of the imprisonment of minors, in which connection the Committee would have liked more explicit information on the practice whereby minors who engaged in prostitution were categorized as delinquents. The main problem noted by the Committee, however, lay in the field of justice. The inadequacies in that regard could not, moreover, be attributed to a mere lack of legal personnel. It had emerged clearly from the State party's report and other information which the Cambodian delegation had not denied that there was interference from the Executive in matters of justice. A sweeping reform of the system was clearly necessary in order to create an independent judiciary that was capable of protecting human rights. In general, tremendous efforts were still needed to ensure that Government officials complied strictly with human rights standards.

22. Lastly, she hoped that the dialogue established between the Committee and the Cambodian delegation had been useful and wished all those engaged in efforts to establish the rule of law in Cambodia every success in the long task ahead of them.

23. Mr. OM Yentieng (Cambodia) thanked all the members of the Committee for their advice and constructive criticisms, which would undoubtedly help the Cambodian authorities in their efforts to establish a democratic society. Thus far, the task had not been easy, but the efforts exerted to that end would be even more effective when peace reigned throughout Cambodia. He hoped that it would be possible to state in forthcoming reports to the Human Rights Committee that the situation had improved considerably.

24. The Cambodian delegation withdrew.

The meeting was suspended at noon and resumed at 12.20 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5) (continued)

Draft general comment concerning article 12 (CCPR/C/21/Rev.1/Add.9) (continued)

Paragraph 16 (continued)

25. Mr. KLEIN said that he had drafted a new paragraph 16, worded to read: "States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. The

application of restrictions in any individual case must be based on clear legal grounds that meet the necessity test and the requirements of proportionality." He also noted that the Committee had already begun its consideration of paragraph 17.

26. Ms. EVATT fully endorsed the new wording of paragraph 16. However, she would have liked it to include a brief mention of some of the decisions connected with the questions referred to in the paragraph under consideration which the Committee had taken in the context of communications or general comments. On that subject, she noted that, in the past, the Committee had reached the conclusion that its general comments should take account of the lessons learned from the consideration of communications and State party reports. Perhaps there was now an opportunity to put that conclusion into practice.

27. The CHAIRPERSON believed that it was restrictions, rather than legal grounds, which should meet the "necessity test", in which case the second sentence of the paragraph should read: "The application of restrictions in any individual case must be based on clear grounds and meet the necessity test and the requirements of proportionality."

28. Lord COLVILLE supported Ms. Evatt's proposal that the text should mention at least some of the decisions taken by the Committee when considering communications. The guidelines concerning the preparation of reports emphasized the need to refer constantly to the general comments of the Committee. If the text of those comments did not reflect the decisions taken by the Committee, States parties should not be expected to refer to them in their reports.

29. Mr. LALLAH, in the interests of saving time, proposed that Ms. Evatt should present the Committee with a rough draft of what she wished to incorporate in paragraph 16.

30. Mr. Lallah's proposal was approved.

Paragraph 17 (continued)

31. Mr. KLEIN noted that the Committee had made several changes to paragraph 17. In the first sentence, the words "erected against" had been replaced by "unnecessarily affecting". It had also decided to mention the right to take residence in a country. Lastly, in the fifth sentence, after the words "include, inter alia", the phrase "inaccessibility for applicants" had been replaced by the words "the lack of access for applicants".

32. Paragraph 17, as orally amended, was adopted.

Paragraph 18

33. Mr. KLEIN said that paragraph 18 concerned the additional obligation not to violate other rights guaranteed in the Covenant. The paragraph contained several examples of measures impeding the enjoyment of the rights of women to move freely or to leave the country, practices which the Committee had often encountered when considering reports submitted by States parties.

34. The CHAIRPERSON said she did not understand why only some paragraphs contained references to communications considered by the Committee.

35. Mr. KLEIN said that he had deleted all the footnotes contained in his first draft apart from those relating to communications and general comments. However, it was for the Committee to decide whether the references contained in the text should be retained.

36. Mr. POCAR said that he agreed with the substance of paragraph 18 and would therefore confine his comments to some of the finer details. He proposed that the words "provided for", which appeared in the first line, should be replaced by the words "permissible under". In addition, he wondered whether the reference to article 26, which concerned the question of equality before the law, should be retained in the second sentence. Even though that article constituted a clause of the Covenant which prohibited discrimination, it enshrined a specific right. The same did not apply to articles 2 and 3, which referred to all the rights protected under the Covenant. In the third sentence, he proposed deletion of the words "for example", as it was not a matter of an example, but rather one of a general principle. As for listing the grounds for discrimination, he believed that it was preferable to duplicate the words of the Covenant, which were less restrictive. He therefore proposed replacing the words "for reasons of" with the words "for reasons such as". He also suggested abbreviating the fourth sentence by replacing the words "impeding the enjoyment of the rights by women" with the words "preventing women". Lastly, there were grounds for questioning whether the final sentence of the paragraph should instead be included in the following section entitled "The right to enter one's own country". In that same sentence, it would perhaps also be preferable to delete the word "party"; given that the right to return to one's own country was part of general international law, deletion of the word "party" would not alter the meaning of the sentence and would also broaden its scope.

37. Ms. CHANET said that generally she had no objection to the text of paragraph 18. She believed, however, that the emphasis placed on discrimination was unjustified. The restrictions provided for under article 12 should be compatible with all the rights guaranteed by the Covenant, without distinction. She therefore supported the proposal to delete the reference to articles 2 and 26 of the Covenant, unless they were mentioned merely as an example.

38. Mr. KRETZMER proposed the deletion in the penultimate sentence of the words "under article 12, paragraph 1", as no part of that article concerned the right to stay in a country. He agreed with Mr. Pocar that, as currently drafted, the last sentence seemed out of place in the paragraph. It would be necessary to clarify its meaning in order to incorporate it.

39. Mr. KLEIN agreed that the words "the restrictions provided for in article 12, paragraph 3" should be replaced with the words "the restrictions permissible under article 12, paragraph 3" and that the phrase "for example", contained in the third sentence, should be deleted. He also agreed that the wording of the Covenant should be reproduced in introducing the list of the grounds for discrimination. He also approved the version of the fourth sentence proposed by Mr. Pocar. On the other hand, he believed that the Committee should limit itself to the obligations entered into by the States

parties to the Covenant and did not therefore agree that the word "State" should be used in preference to "State party". Similarly, in the penultimate sentence, he preferred to retain the wording "stay under article 12, paragraph 1" in order to bring out clearly the link existing between articles 12 and 13 of the Covenant. Lastly, he was strongly opposed to deletion of the reference to article 26 of the Covenant. Far from being just an example, it was a reference which reflected the Committee's experience; the most frequent violations which it encountered in its work were violations of article 26.

40. Mr. POCAR acknowledged the importance of article 26, but emphasized that the application of restrictions in a manner compatible with the rights guaranteed by the Covenant and their application without discrimination were two distinct things. He added that article 26 guaranteed the equality of all persons before the law. If national legislation was itself discriminatory, article 26 could be violated without any violation of article 12, paragraph 3. Accordingly, the restriction on the enjoyment of the right by women to circulate freely, if it was not contrary to law, did not constitute a violation of article 12, paragraph 3, but was nevertheless a violation of article 26.

41. Ms. EVATT and Mr. LALLAH shared Mr. Pocar's opinion.

42. The CHAIRPERSON proposed that, in order to take account of all the views expressed and resolve the difficulties stated, the first two sentences of paragraph 18 should be amended by combining them into one sentence that would read: "The application of the restrictions permissible under article 12, paragraph 3, needs to be consistent with the other rights guaranteed in the Covenant and with the underlying principle of equality and/or non-discrimination."

43. Ms. CHANET approved the Chairperson's proposal, in which connection she believed that it could be worthwhile to use the version adopted by the Committee in its General Comment 22 on article 18, adapting it to the context of the rights enshrined in article 12 of the Covenant. Paragraph 8 of that General Comment read: "Limitations imposed must be established by law ... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner." The third sentence of paragraph 18, as orally amended, would then follow.

44. The proposals of the Chairperson and Ms. Chanet were approved.

45. The CHAIRPERSON invited the members of the Committee to examine the last two sentences of paragraph 18.

46. Ms. EVATT proposed that the penultimate sentence should be replaced with the following sentence: "An alien whose right to stay in a State is to be restricted or withdrawn in accordance with article 12, paragraph 3, is entitled to exercise the procedures set out in article 13."

47. Mr. KRETZMER pointed out that an alien did not necessarily have the right to stay in a given country. Like article 13, article 12 referred to

persons, aliens or otherwise, who were "lawfully" in the territory of a State party. What about persons who were unlawfully in the territory of a State party? In that regard, Ms. Evatt's proposal seemed to go beyond the stipulations of articles 12 and 13 of the Covenant.

48. Mr. KLEIN stated that, in the example of that particular case, an alien who claimed to be lawfully in the territory of a State party would nevertheless be threatened with expulsion by the authorities of that State. In that event, the alien in question should essentially be able to invoke in his favour the provisions contained in article 13 of the Covenant.

49. Ms. CHANET said she failed to see the point of the penultimate sentence of paragraph 18. Article 12, paragraph 1, of the Covenant did not refer to the right of any person to be or stay in the territory of a State party, but only to the right to liberty of movement and freedom to choose residence in that territory. Consequently, she did not see how the provisions of that paragraph could refer to an alien who wished to stay in a country and who would be subject to expulsion. In her view, the question of expelling aliens came under article 13 of the Covenant and there was no reason to establish a link between the rights enshrined in article 12 and those enshrined in article 13 of the Covenant.

50. After an exchange of views between Mr. YALDEN, Mr. AMOR, Ms. EVATT and Mr. LALLAH, the CHAIRPERSON said that the last two sentences of draft paragraph 18 would be set aside until the Committee had taken up draft paragraph 21.

Paragraph 19

51. Mr. KRETZMER proposed that the first four sentences of paragraph 19 should be amended to read: "The right of a person to enter his or her own country recognizes the special relationship of a person to that country. This right has various facets. The right to enter implies the right to remain in one's own country. The right to enter includes not only the right to return after having left one's own country. It may also entitle a person to come to a country for the first time if he or she was born outside that country (for example, if that country is that person's State of nationality)."

52. Mr. Kretzmer's proposal was approved.

53. The CHAIRPERSON invited the members of the Committee to consider the last two sentences of paragraph 19.

54. Following an exchange of views in which Mr. YALDEN, Mr. KLEIN, Mr. WIERUSZEWSKI, Mr. AMOR, Ms. EVATT, Lord COLVILLE and the CHAIRPERSON took part, it was decided to retain the penultimate sentence of paragraph 19 and to replace the words "mass displacements" in the last sentence with the words "mass expulsions".

55. Paragraph 19, as orally amended, was adopted.

The meeting rose at 1 p.m.